

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CENTRAL IOWA POWER COOPERATIVE	DOCKET NO. P-842
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO TAKE
OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued March 13, 2001)

On November 1, 2000, Central Iowa Power Cooperative (CIPCO) filed a petition for a permit to construct, operate, and maintain approximately 4.6 miles of 8.625-inch diameter steel pipeline for the transportation of natural gas in Adair and Union Counties, Iowa, pursuant to Iowa Code §§ 479.5 and 479.6 (2001) and 199 Iowa Administrative Code (IAC) 10.2. CIPCO amended its petition on January 31, 2001. The proposed pipeline will transport natural gas from a Natural Gas Pipeline Company of America (NGPL) town border station in the NW ¼ of S31, T74N, R30W in Adair County, to CIPCO's existing Summit Lake electric power plant near Creston, Union County, Iowa. The proposed pipeline would provide a source of fuel for the power plant. On March 7, 2001, the Utilities Board (Board) assigned this proceeding to a presiding officer and directed that a procedural schedule be established and a date set for hearing.

CIPCO filed a land restoration plan with its petition. The plan will be evaluated for compliance with the requirements of Iowa Code § 479.29 and 199 IAC 9 in this docket.

The Board's authority and jurisdiction

The Board has authority to grant permits for pipelines in whole or in part upon terms, conditions, and restrictions as to safety requirements, and as to location and route, as it determines to be just and proper. Iowa Code §§ 479.12 and 479.18 (2001).

To obtain a permit, the petitioner must show that the services it proposes to render will promote the public convenience and necessity. Iowa Code § 479.12 (2001). The petitioner must also satisfy the financial requirements of Iowa Code § 479.26 (2001).

The issues

Pursuant to Iowa Code §§ 479.7 and 479.8 (2001) and 199 IAC 10.6, this matter will be set for a public hearing for the presentation of oral and documentary evidence and the cross-examination of witnesses concerning the public convenience and necessity issue, any safety issues, any pipeline location and route issues, the financial issues, and issues raised by objectors or any other party. Whether or not the land restoration meets the requirements of the statute and rules will also be reviewed. The conduct of this case will be governed by Iowa Code Chapters 17A and 479 (2001), and by Board rules at 199 IAC chapters 9 and 10.

Prepared testimony and exhibits

All parties will be given the opportunity to present and respond to evidence and argument on all issues, and to be represented by counsel at their own expense. Iowa Code § 17A.12(4) (2001). The proposed decision and order that the administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed in the record. Iowa Code §17A.12(8) (2001). Unless contrary arrangements are made on the record at the hearing, all evidence will be received at the hearing, and the record will be closed to any further evidence at the conclusion of the hearing.

The submission of prepared evidence prior to hearing will help to identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. The use of prepared testimony prevents surprise at the hearing and helps each party to prepare adequately for the hearing, so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3) and 479.11 (2001). This procedure also tends to diminish the length of the hearing, and spares the parties the expense and inconvenience of additional hearings.

CIPCO must submit prepared testimony and exhibits prior to the hearing. At a minimum, CIPCO's prepared testimony must address the issues listed above, and

the issues identified in the attached report from Mr. Jeffrey L. O'Neal. In addition, CIPCO's prepared testimony should justify its route selection and explain why it did not run the pipeline from the existing NGPL line west of the Summit Lake electric power plant to the plant. CIPCO should file testimony explaining who will construct the line and the experience of the company performing the construction. CIPCO should file a consolidated balance sheet for the year 2000 if one is available with its prepared testimony, or provide an affidavit that states it continues to have assets above the required statutory amount.

CIPCO filed a Statement of Damage Claims with its amended Petition on January 31, 2001. The "How damages will be determined" section does not discuss all the types of damages contained in Iowa Code §§ 479.25 and 479.45 (2001). The last sentence of the "Dispute resolution" section refers only to arbitration and not to the other forms of dispute resolution discussed in Iowa Code §§ 479.41 and 479.46 (2001), and does not reflect that landowners may also avail themselves of the dispute resolution procedures. The statement must be amended to reflect these changes and a revised statement filed with CIPCO's prepared testimony.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate), and any objectors may also file prepared testimony and exhibits before the hearing in accordance with the procedural schedule.

Parties who choose not to file prepared testimony and exhibits before the hearing will not be precluded from participating in the proceedings. If an objector, for example, does not intend to present evidence going substantially beyond the information contained in the letter of objection, it is unnecessary for the objector to

file prepared testimony. However, when a party has a substantial amount of information to present to the Utilities Board about the petition, if the information has not been previously disclosed to the Board, it should be presented in the form of prepared testimony and exhibits according to the procedural schedule established below.

Party status

Presently, CIPCO and the Consumer Advocate are the only parties to this proceeding. Iowa Code §§ 17A.2(8) and 475A.2 (2001). Anyone who has filed or will file an objection pursuant to Iowa Code §§ 479.9 and 479.10 (2001) and 199 IAC 10.5 will also be presumed to be a party to this case. However, no objector is entitled to party status merely because that person has written a letter. In order to qualify as a party, the objector must be able to demonstrate some right or interest, which may be affected by the granting of the permit. Iowa Code § 479.9 (2001). An objector's status as a party may be challenged at the hearing, and an objector who cannot demonstrate a right or interest that may be affected by the granting of the permit will no longer be considered a party. Therefore, at minimum, objectors should be prepared to give evidence that will explain the nature of their specific rights or interests they believe should be protected, and will show how these rights or interests will be affected by the pipeline. As has already been noted, to the extent that the evidence goes substantially beyond information already communicated to the Board in an objection letter, it should be reduced to writing and filed as prepared testimony according to the procedural schedule established below.

Because objectors will be presumed to be parties up to the time of the hearing, an objector will receive copies of all documents that are filed in this docket after the letter of objection has been filed with the Board. This means that if a person files an objection after some or all of the prepared testimony and exhibits have already been filed with the Board by other parties, the objector should make direct contact with the parties who have already filed prepared testimony and exhibits in order to obtain a copy of those materials. The official file of this case will be available for inspection at the Iowa Utilities Board Records Center, 350 Maple Street, Des Moines, Iowa. 199 IAC 1.9(1).

Objections must be filed not less than five days prior to the date of hearing. Late filed objections may be permitted if good cause is shown. 199 IAC 10.5. Objections must be made in writing and filed with the Acting Executive Secretary of the Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

After an objector has filed a letter of objection, all further communications from the objector to the Board having to do with this case (including motions or prepared testimony and exhibits) should be sent to the Acting Executive Secretary. A party (including objectors) must file an original and two copies of each communication with the Acting Executive Secretary and the party must send one copy to each of the other parties to this case. 199 IAC 1.8. Along with the communication being sent, the party must file with the Board a certificate of service that conforms to 199 IAC 2.2(16), that verifies a copy of the document was served upon the other parties. These procedures are necessary to comply with Iowa Code Chapter 17A, that provides in part:

Unless required for the disposition of ex parte matters specifically authorized by statute, parties or their representatives in a contested case and persons with a direct or indirect interest in such a case *shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with a presiding officer in that contested case, except upon notice and opportunity for all parties to participate* as shall be provided for by agency rules.

Iowa Code §§ 17A.17(2) (2001)(emphasis added). Objectors and parties should examine 199 IAC Ch. 10 and 199 IAC 1.8 for other substantive and procedural rules that apply to this case.

Proposal to take official notice

Mr. Jeffrey L. O'Neal, Utilities Board staff, has prepared a report concerning CIPCO's petition. Iowa Code § 479.11 (2001). A copy of the report, dated March 12, 2001, is attached to this order. Pursuant to Iowa Code § 17A.14(4) (2001), the administrative law judge proposes to take official notice of the report and the facts contained therein thus making them a part of the record of this case. Iowa Code § 17A.12(6)(c) (2001). Any party objecting to the taking of official notice of the report should file such objection as soon as possible, and no later than five days prior to the hearing. The parties will have the opportunity to contest any information contained in the report in prefiled testimony and at the hearing.

IT IS THEREFORE ORDERED:

1. Each person who files a letter of objection to CIPCO's petition in this docket will be presumed to be a party in the proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the pipeline.

2. Objections must be made in writing and filed with the Acting Executive Secretary of the Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069, no later than five days before the hearing. Objectors must file an original and two copies of all subsequent communications to the Board with the Acting Executive Secretary. The communications must be accompanied by a certificate of service.

3. The following procedural schedule is established:

a. On or before April 2, 2001, CIPCO must file prepared direct testimony relating to its petition for a permit to construct, operate and maintain a natural gas pipeline.

b. On or before April 17, 2001, the Consumer Advocate and any objector may file prepared responsive testimony.

c. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of hearing will be held at 10:00 a.m. on April 24, 2001, in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

4. The administrative law judge proposes to take official notice of Mr. O'Neal's report attached to this order dated March 12, 2001 and of the facts contained therein. Any party objecting to the taking of official notice of the report should file such objection as soon as possible, and must file such objection no later than five days prior to the hearing. Any party desiring to cross-examine the author of

the report concerning the statements contained therein must file a notice of intent to cross-examine no later than April 19, 2001.

5. Pursuant to Iowa Code §§ 17A.12(1) (2001) and 199 IAC 10.4, a copy of this order will be served by ordinary mail upon CIPCO and the Consumer Advocate. No persons have filed objections to the petition as of the date of this order.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Acting Executive Secretary

Dated at Des Moines, Iowa, this 13th day of March, 2001.

**Department of Commerce
UTILITIES DIVISION
SAFETY AND ENGINEERING SECTION**

TO: DOCKET NO. P-842

FROM: JEFFREY L. O'NEAL

DATE: MARCH 12, 2001

SUBJ: CIPCO PETITION FOR NATURAL GAS PIPELINE PERMIT

On November 1, 2000, Central Iowa Power Cooperative (CIPCO) filed a petition for a natural gas pipeline permit with the Iowa Utilities Board (Board). CIPCO proposes to construct approximately 4.6 miles of 8-inch diameter pipeline for the transportation of natural gas from a Natural Gas Pipeline Company of America (NGPL) TBS north of Creston in Adair County to a power plant near Creston in Union County. The maximum allowable operating pressure of the proposed pipeline will be 740 psig. The pipeline would provide a fuel for the existing CIPCO Summit Lake electric power plant near Creston, Iowa.

Petition

A review of the petition revealed several deficiencies. By letter dated January 5, 2001, staff notified CIPCO of the deficiencies. On January 31, 2001, CIPCO filed its response and amended exhibits. Staff has reviewed CIPCO's filing and the deficiencies were substantially corrected. The filing is essentially in order except for some minor corrections to the exhibits that CIPCO will be asked to remedy.

No informational meeting was held because the line will be less than 5 miles long. See Iowa Code § 479.5 (2001). The petition does not request the right of eminent domain. No objections have been filed.

The filing requirements for P-dockets do not require specific information be provided on how the project will "promote the public convenience and necessity" (Iowa Code § 479.12). This is presumably because the law requires a hearing at which such evidence can be presented. It is apparent from the filing that the pipeline would transport gas from a connection with Natural Gas Pipeline Company of America to a power plant site. But the justification for the project will have to be made at hearing.

Route Inspection

On December 29, 2000, Reed Helm of Board Staff conducted an inspection of the proposed route. The inspection report stated the proposed route does not appear impractical or unreasonable and construction should not be difficult. Based on the route inspection report, staff asked CIPCO to provide additional information regarding two items: class location and land use. CIPCO provided the requested information in its January 31, 2001, filing.

The route is in a rural location and is mostly on agricultural land. At the time of inspection snow cover hindered examination of land use on the route. CIPCO has provided information stating that (other than the power plant site) land use is 75% tilled agricultural land and 25% pasture or Conservation Reserve. The route passes two farmsteads but there are no buildings in close proximity to the route.

Federal pipeline safety standards classify routes according to the number of buildings intended for human occupancy within 220 yards, or places of public assembly within 100 yards (49 CFR 192.5). Most of the route is in Location Class 1, meaning there are few if any nearby dwellings. The south end of the route is Location Class 3, due to the number of people that work at the electric generating station, and is subject to certain higher standards.

Pipeline Safety Code Compliance

The engineering standards for natural gas pipelines are set forth in 199 IAC10.12. Construction will be subject to 49 CFR Part 192 and ASME B31.8. The information provided appears to indicate compliance with those codes.

However, there is insufficient data to determine if the pipeline would comply with § 192.150, which requires pipelines be constructed to permit the passage of internal inspection devices, commonly known as "smart pigs." Such devices are run through pipelines and can detect damage or defects by mechanical and/or electromagnetic means. The regulations do not at this time require smart pigs be utilized, but do require pipelines be capable of such use. This means full opening valves, gradual bends, and other precautions to allow these relatively long devices to pass down a pipeline. CIPCO should be asked to provide testimony on whether its line design could accommodate the passage of internal inspection devices.

Once built, the continuing operation and maintenance of the pipeline, and emergency response, will also have to be in accordance with the aforementioned standards, plus the drug testing requirements of 49 CFR Part 199. CIPCO is an electric generation and transmission cooperative. CIPCO does not currently operate any natural gas pipelines, and does not have any experience or expertise in the operation and maintenance of pipelines. The filings do not address how the company will handle operation, maintenance, and emergency response in compliance with Federal Minimum Safety Standards. CIPCO should be asked to explain the following: 1) how it will prepare Operating and Maintenance and Emergency Plans; 2) how it will provide qualified personnel to operate and maintain the pipeline and to respond to any pipeline emergencies; and 3) if CIPCO plans to hire a contractor to operate the line, whether a contract has been signed.

In addition, much of the proposed route parallels a 34,500-volt electric transmission line. In such cases certain precautions against damage by ground faults or lightning are required by 49 CFR § 192.467(f). CIPCO should also be asked to review the possibility of cathodic protection problems due proximity to the electric transmission line. These two issues should be addressed in hearing testimony.

Land Restoration Plan

On January 10, 2001, in Docket No. RMU-99-10, In Re: Restoration of Agricultural Lands During And After Pipeline Construction, the Board adopted new rules prescribing standards for the restoration of agricultural lands during and after pipeline construction. The new rules require petitioners for permits for pipeline construction to file a written land restoration plan with the petition for permit and provide copies to all landowners. These rules are found at 199 IAC Chapter 9. CIPCO filed such a plan as Exhibit F-1. In accordance with Subrule 9.2(1), a land restoration plan must include but not be limited to the following:

- 1) A brief description of purpose and nature of the pipeline project;
- 2) A description of the sequence of events that will occur during construction;
- 3) A description of how compliance with subrules 9.4(1) and 9.4(10) will be accomplished; and
- 4) The plan should include a point of contact for landowner inquiries or claims as provided for in rule 9.5.

A review of CIPCO's plan shows that although it adequately addresses 199 IAC 9.2(1)"a," "b," and "d," the plan consists primarily of language duplicating rule 9.4. However, it appears to comply with the letter of Chapter 9 on required plan content.

Conclusion

The inspection did not reveal anything that would make the proposed route unacceptable for the construction, operation, and maintenance of the proposed pipeline. The filing is essentially in order, except that staff will be requesting CIPCO make some minor corrections to a couple of the exhibits. In addition, CIPCO should address the following issues in testimony:

- 1) How the project would promote the public convenience and necessity. (Iowa Code 479.12);
- 2) Whether the pipeline would be constructed to accommodate the passage of instrumented internal inspection devices. (49 CFR § 192.150);
- 3) Whether the necessary precautions have been taken due to the presence of a paralleling electric transmission line. (49 CFR § 192.467(f)); and
- 4) How CIPCO will obtain the trained and qualified personnel necessary to operate and maintain the pipeline and to respond to pipeline emergencies. Staff recommends that no permit be issued until the issue of O&M and emergency response is resolved.

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